

**THE COST OF GIVING AND RECEIVING:  
DONATIONS TO POLITICAL PARTIES IN THE UNITED KINGDOM**

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## INTRODUCTION

The United Kingdom is a recent addition to the family of jurisdictions which require political parties to disclose details of donations they have received. The requirement was introduced by the Political Parties, Elections and Referendums Act 2000 which was passed in the wake of allegations of sleaze that engulfed the governing Conservative Party in the 1990s.<sup>1</sup> Before the implementation of the 2000 Act, the British system of party funding was one from which the State largely stood back. There was no disclosure (except that companies had to disclose donations to shareholders) and there were no donation controls (except that trade unions required the consent of their members to promote political objects).<sup>2</sup> In addition, there was only very limited direct public funding for the political parties (which was provided only to the Opposition parties and only to help them with parliamentary activities). And although there were spending limits, these applied only to candidates but not also to the national political parties, which are the main players and biggest spenders in general election campaigns.<sup>3</sup> But much has changed, and British political parties have moved from being among the least to being among the most highly regulated political parties in the world. At the heart of the new regulatory framework is the reporting and disclosure of donations introduced by the Political Parties, Elections and Referendums Act 2000.<sup>4</sup>

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<sup>1</sup> For background, see N Ghaleigh, 'Expenditure, Donations and Public Funding under the United Kingdom's Political Parties, Elections and Referendums Act 2000 – And Beyond?', in K D Ewing and S Issacaharoff, Party Funding and Campaign Finance in Comparative Perspective (2005), ch 3; See also K D Ewing, 'The Funding of Political Parties in Britain: Prospects for Reform' (1998) 7 Griffith Law Review 185.

<sup>2</sup> See respectively Companies Act 1985, s 235, and Trade Union and Labour Relations (Consolidation) Act 1992, ss 71 - 96 (previously Trade Union Act 1913, as amended by Trade Union Act 1984).

<sup>3</sup> See K D Ewing, The Funding of Political Parties in Britain (CUP, 1987), chapters 4 and 5.

<sup>4</sup> For a full account of the Act as a whole, see K D Ewing, 'Transparency, Accountability and Equality: The Political Parties, Elections and Referendums Act 2000' [2001] Public Law 542.

In this article we consider the effects of the new disclosure regime that was introduced in the United Kingdom in 2000. We begin by outlining the origins and background of the legislation, and then consider the purposes of disclosure of donations. Here we suggest that the reporting and disclosure provisions of the legislation can be seen as having fundamentally an anti-corruption rationale but that the anti-corruption focus was nevertheless quite limited.<sup>5</sup> As a result it was never likely to address the systemic corruption of the British political system by donations of a size which are perhaps without precedent in contemporary liberal democracies. It does not follow from this, however, that more limited ambitions are incapable of being realized, though there may be a contradiction in tolerating corruption of process while seeking to stop the corruption of institutions and personnel. Having considered the purposes of reporting and disclosure, we then move to analyze the data that have been generated as a consequence of the legislation, before concluding with an assessment of the legislation. Here we consider whether the ambitions of the authors of the legislation of 2000 have been realized, and we consider how far the legislation has induced the parties to change their fund raising practices. We conclude with an account of some more recent proposals for further reform which were made in the wake of funding scandals that engulfed the governing Labour Party in 2001-2 and again in 2006.

## **THE POLITICS OF DISCLOSURE**

Although the British system was largely unregulated before 2000, it was only relatively recently that the identity of donors to political parties became a significantly

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<sup>5</sup> Other provisions of the Act had other objectives: the spending limits were designed mainly to promote electoral equality, though they too would indirectly reinforce the anti-corruption rationale of the legislation. On the equality provisions see K D Ewing, 'Promoting Political Equality: Spending Limits in British Electoral Law' (2003) 2(4) Election Law Journal 499.

controversial issue. In the post war period life was reassuringly certain and simple: the Labour Party was funded mainly by trade unions and the Conservative Party relied heavily on corporations.<sup>6</sup> There was no secret about how much trade unions paid to the Labour Party, which has published annual accounts since 1900.<sup>7</sup> Although these did not list the names and amounts of donors, details of trade union political funds were published annually by the Chief Register of Friendly Societies (since 1913) and more recently by the Certification Officer for Trade Unions and Employers' Associations (since 1976).<sup>8</sup> Larger unions paid more than smaller unions. Nor was there really much secrecy about the Conservative Party. Since 1967 companies had been required in a tit for tat measure to disclose to shareholders all political donations over £200 annually. It is true that there was no official collation or publication of this information, which was a matter of company rather than electoral law. But organizations like the Labour Research Department regularly trawled the annual reports of companies on deposit in Companies House and published details of company donations to the Conservative Party and to other parties.<sup>9</sup>

This was never a very satisfactory arrangement, though it was adequate at the time. But it became wholly inadequate when the pattern of party funding began to change. In the 1990s the parties began to target rich individuals as a source of money. Although large donations had been given in the past, they had never been cultivated as a serious resource. In the case of the Conservative Party in particular it involved

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<sup>6</sup> See M Pinto – Duschinsky, British Political Finance 1830 – 1980 (American Enterprise Institute, 1981).

<sup>7</sup> These were published as an appendix to the party's annual report. The Conservative Party did not publish accounts until the 1980s. But as the Conservative Party's fund raiser during much of the Thatcher years made clear, there was not much appetite for revealing too much. A McAlpine, Once a Jolly Bagman (Weidenfeld and Nicolson, 1997).

<sup>8</sup> The Certification Officer is a statutory officer who is the government's regulator of trade unions.

<sup>9</sup> These details were published in the monthly journal Labour Research. The LRD has no formal connection with the Labour Party but is an independent organization funded by the Labour movement.

harvesting donations from foreign sources who had little apparent contact with the United Kingdom, raising questions about the motives of the donors. There was also concern that some of these donations were extremely large, amounting to £1 million or more.<sup>10</sup> Quite why this development occurred is not easy to understand. Britain was (and remains) a country in which it was not easy to spend vast sums of money in elections, largely because there have been (since 1883) tight spending limits on parliamentary candidates,<sup>11</sup> and (since 1954) a statutory ban on television advertising for political purposes.<sup>12</sup> Nevertheless a number of factors appeared to be responsible for the changing patterns of fund raising. Not the least is that the 1997 general election was especially competitive (with Labour having lost an unprecedented four elections in a row – in 1979, 1983, 1987 and 1992). It was make or break for Labour, and both the main parties were now involved in an arms race, there being no limit to how much they could spend on national election campaigns.<sup>13</sup> Spending in 1997 was more than 150% that incurred in 1992.<sup>14</sup>

But it was not only changing fund raising practices leading to a growing interest in who was donating and why that fuelled the campaign for reform. The other issue was the issue of sleaze, a word used to describe a culture of low grade corruption that afflicted British public life in the mid 1990s, as various instruments of self restraint evaporated in a culture of greed. The best known example of this was the

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<sup>10</sup> For an account of foreign donations, see Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, vol 1, Cm 4057 – 1 (1998), ch 5. The lack of transparency may have exaggerated the concerns.

<sup>11</sup> Representation of the People Act 1983, ss 75 and 76 (applying to candidates and third parties). See Bowman v United Kingdom (1998) 26 EHRR 1.

<sup>12</sup> The current restraints are to be found in the Communications Act 2003, s 319 - 321. For a strong defence of this measure, see Electoral Commission, Party Political Broadcasts (2003). See also R v Radio Authority, ex parte Bull [1995] 4 All ER 481, at p 495 (Kennedy J).

<sup>13</sup> See R v Tronoh Mines Ltd [1952] 1 All ER 697.

<sup>14</sup> Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, above, ch 3.

cash for questions affair in which a number of Members of Parliament were found to have taken money in brown envelopes for asking questions in Parliament on behalf of a prominent businessman. There had always been an issue about kickbacks for political donations, but these were thought principally to take the form of personal political honours for the executives of companies that made the donations: political honours in the form of peerages (entitling the recipient to join the House of Lords, the second House of Parliament) or knighthoods (entitling the recipient to be styled “Sir” and more importantly his wife to be styled “Lady”).<sup>15</sup> This was a problem associated with Conservative governments,<sup>16</sup> as was the more recent problem of large personal donations in a culture of secrecy. The latter in particular was exploited by the Labour Party (when in opposition), which succeeded in making political capital out of the situation. It did so not only by focussing public attention on the general issue of sleaze but by taking the initiative of publishing the names of all those who had donated more than £5,000 in the previous year.<sup>17</sup>

These latter reports concealed more than they revealed, most notably because they only listed the name and not the amount of the donation.<sup>18</sup> Yet not only did the practice of voluntary disclosure serve to increase the discomfort of the Conservatives (forced to take a similar initiative in 1998), it also served to showcase the fact that the Labour Party now had a diverse funding base which included business people and

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<sup>15</sup> The explicit purchase and sale of honours was a criminal offense: Honours (Prevention of Abuses) Act 1925.

<sup>16</sup> This is partly because at that time the Labour Party did not receive corporate donations, and was the subject of sometimes hostile anti-Labour election campaigns by corporate interests, most notably in 1959 when the iron and steel companies feared that they would be nationalized if Labour won the election in that year.

<sup>17</sup> Labour Party Report 1996.

<sup>18</sup> The information was also published 10 months after the end of the year in which the donations were made.

media celebrities.<sup>19</sup> But Labour's self-satisfaction was to backfire spectacularly. Shortly after it was elected to government in 1997 it was revealed that the Labour Party had received a donation of £1 million from the Formula 1 racing boss, Bernie Ecclestone. It was also revealed that the Labour Party was negotiating to land another donation of £1 million from the same source, and that Mr. Ecclestone and his colleagues had had a meeting with Tony Blair (the Prime Minister) at 10 Downing Street (the Prime Minister's official residence and office). The meeting took place at a time that a ban on tobacco advertising in sport was being introduced and at a time when Formula 1 was contemplating a relocation from Britain to Malaysia because of the impending ban. Coincidentally, the government announced shortly after the meeting with Mr. Ecclestone and his associates that although the tobacco ban in sport would continue, there would be an exemption for Formula 1. Much to the government's surprise and consternation, this coincidence of events gave rise to a political outcry as a result of what was until then the biggest funding scandal in modern British political history.<sup>20</sup>

The immediate effect of the Formula 1 scandal was to persuade the government to move with alacrity to implement its manifesto commitment to clean up political funding.<sup>21</sup> The matter was referred in the first instance for independent examination by the Committee on Standards in Public Life which had been set up under a senior judge by the then Conservative government in 1994. This is a standing body concerned with ethical standards in public life, but whose terms of reference did

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<sup>19</sup> For a colourful account, see D Osler, Labour Party PLC (Mainstream Publishing, 2002).

<sup>20</sup> For details, see K D Ewing, 'The Disclosure of Political Donations in Britain', in K D Ewing and S Issacharoff, note 1 above, ch 4.

<sup>21</sup> See generally on the reform process, L Klein, 'On the Brink of Reform: Political Party Funding in Britain' (1999) 31 Case W Res J Int'l L 1.

not include the funding of political parties.<sup>22</sup> These terms of reference were changed by Prime Minister Blair in 1998,<sup>23</sup> and a new chair – Sir Patrick Neill QC – was appointed to oversee the inquiry.<sup>24</sup> The Neill Committee made far reaching proposals in 100 recommendations to reform the funding of political parties,<sup>25</sup> and these were largely accepted by the government and implemented by the Political Parties, Elections and Referendums Act 2000. One of the key provisions was the requirement that parties report donations in excess of £5,000 to the Electoral Commission on a quarterly basis, and on a weekly basis during elections. But this did not end Labour’s discomfiture, as funding scandal was piled upon funding scandal in 2000, 2001 and 2002, and again in 2006. These involved allegations that Labour donors had access to the Prime Minister, that the Prime Minister intervened on behalf of one donor who was negotiating to buy a previously nationalized steel company in eastern Europe, and that a Labour donor had been awarded a government contract without normal procurement procedures being followed.<sup>26</sup> None of these allegations was found to have substance; but they contributed nevertheless to a political climate polluted by the overwhelming stench of sleaze, some (though by no means all ) of which owed much to the immaturity as well as the good judgment of the press.<sup>27</sup>

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<sup>22</sup> Its original terms of reference were: To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life’: Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, above, p 256.

<sup>23</sup> Its terms of reference were extended: ‘To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements’: *ibid*.

<sup>24</sup> Sir Patrick was also ennobled so that by the time the inquiry into the Funding of Political Parties began he had metamorphosed into Lord Neill of Bladen (now an independent member of the House of Lords).

<sup>25</sup> Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, Cm 4057 – 1 (1998). For a critique, see N S Ghaleigh, ‘The Funding of Political Parties in the United Kingdom: The Case for Cherry-Picking’ [1999] Public Law .

<sup>26</sup> See Ewing, note 3 above, for fuller details.

<sup>27</sup> In the last case (for the award of a contract to supply vaccines to deal with a possible terrorist threat), an investigation by the National Audit Office (the independent spending watchdog) revealed that the supplier had been recommended to officials before they had been made aware of the recommended

## THE PURPOSE OF DISCLOSURE

So just what is the purpose of disclosure? One answer is provided by the US Supreme Court in *Buckley v Valeo*,<sup>28</sup> where we find several rationales. One is the State's interest in the elimination of corruption; another is the desire to ensure that electors are fully informed about the causes a party or candidate is likely to represent in government. But although these are strong and compelling reasons for disclosure, it is important to note that the prevention of corruption and the freedom to make an informed vote are not the only objectives of public policy in the area of party funding or campaign finance. Other relevant considerations include the need to ensure that parties and candidates are adequately funded or have adequate opportunities to promote their campaigns and other activities. Similarly, there is a need to ensure that as many people as possible are encouraged or persuaded to support political parties.<sup>29</sup> A broadly based system of funding is an indicator of commitment and confidence in the electoral process, perhaps a greater indicator of the depth of that commitment and confidence than electoral turnout. Both indicators are at a worryingly low level in many liberal democracies.<sup>30</sup> The other issue to be reconciled is the need to respect what must now be called human rights, and in particular the individual's right to privacy. This becomes a concern for some if people are required by disclosure to

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supplier's donation to the Labour Party. Comptroller and Auditor General, Procurement of Vaccines by the Department of Health, HC 625 (2002- 2003) (9 April 2003).

<sup>28</sup> 424 US 1 (1976).

<sup>29</sup> Issacaroff and Karlan point to a related concern which is the need to channel the money to parties and candidates and not to third parties. See S Issacharoff and P S Karlan, 'The Hydraulics of Campaign Finance Reform' (1999) 77 Texas Law Review 1707.

<sup>30</sup> The latter is a serious concern in number of countries. Turnout in the British general election in 2005 was only 61% of those registered, with the government having a mandate from only 36% of those voting.

identify their political beliefs.<sup>31</sup> We return to consider some of these different objectives and also consider the effectiveness of disclosure as a weapon in the fight against corruption.

### **Disclosure and Corruption**

Disclosure has been introduced in the United Kingdom mainly as an anti-corruption measure, though we are not so vulgar as to use the word corruption in modern public debate, perhaps because of the debilitating effect on public discussion of English libel law. We prefer to say that it is designed to improve standards in public life, carefully overlooking the fact that these standards need to be improved only because they are corrupt or have been corrupted. In this sense dealing with corruption and raising standards in public life are synonyms. But what is meant by corruption and improper pressure? It is at this point that we encounter the indeterminacy of political science where there is no agreed definition or understanding of the term, with each attempt at a definition found to be as inconclusive as the last.<sup>32</sup> We are thus thrown back on a dictionary rather than a scientific definition. The former emphasizes that corruption is a word that implies a sense of debasement and one that also implies a scale of offense with a thick or general meaning at one end of the scale, and a thin or narrow meaning at the other end. It is also one that applies in different contexts and involves many different potential actors. But even the adoption of a linguistic definition is not without difficulty, as there are many different linguistic definitions. One that best captures the foregoing features of the term is found in the *Chambers' Dictionary* which defines

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<sup>31</sup> This was a concern raised by the Conservative Party in its evidence to the Neill Committee above. It is also a view argued forcefully by the Conservative Party's then bagman. A McAlpine, note 7 above.

<sup>32</sup> See O Kurer, 'Corruption: An Alternative Approach to its Definition and Assessment' (2005) 53 *Political Studies* 222.

corrupt in the following manner: “to make putrid, to taint, to debase, to spoil, to destroy the purity of, to pervert”, as well as “to bribe”. We wish to make it clear, however, that that by adopting the language of corruption we are not claiming or implying directly or by innuendo that in the British system money by way of political donations is being given by anyone with the intention of receiving favors or that favors are returned for money by way of political donations received.

Within this linguistic construct, the term corruption has two aspects. One is the *what* or *whom* (the targets of corruption), and the other is the *how* (the means of corruption). In the context of donations to political parties, the most straightforward (and thinnest or most narrow) meaning of corruption is bribery. But that is not our concern. As Rose-Ackerman has pointed out:

even entirely legal contributions from wealthy interests are a source of concern. The worry is favoritism. Groups that give funds to elected officials expect help in the legislative process. They may also expect special treatment on individual problems in dealing with the bureaucracy or in seeking contracts and concessions. If the interests of such groups or individuals conflict with those of the general public, this undermines democratic values.<sup>33</sup>

This type of concern is certainly congruent with the disclosure regime in the British legislation, and with the views of the Neill Committee in particular<sup>34</sup> – that is to say, a thicker concept of corruption which includes donations which have the effect of enhancing the likelihood of a benefit being conferred on an individual or which

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<sup>33</sup> S Rose-Ackerman, *Corruption and Government* (CUP, 1999), p 133.

<sup>34</sup> Committee on Standards in Public Life, note 25 above, para 4.32.

provide the donor with an opportunity to influence a decision or to promote his or her personal interests. However, in developing its proposals for regulatory reform, the Neill Committee appeared expressly to eschew a still thicker conception of corruption. This is one which is based on the corruption of process rather than the corruption of institutions or personnel. Such a conception would see large donations as being inherently corrupting, because of their impact on one of the first principles of democratic self government. This is the principle of political equality (including the right to equality of influence) reflected in the modern franchise.<sup>35</sup> But although the Neill Committee appeared simultaneously relaxed and uneasy about large donations,<sup>36</sup> it also expressed the view that “[i]f a party becomes over-dependent on a particular source, that is its own affair, provided its dependence is a matter of public knowledge”.<sup>37</sup>

### **Disclosure and Informed Choice**

While corruption is thus part of the reason for disclosure, it is not the whole reason. The existence of other reasons is revealed in part by the fact that disclosure is applied equally to all political parties. This would be consistent with disclosure being required as a way of exposing the generally corrupting impact of large donations (that is to say where the concept of corruption in its thickest sense is used). But that is not the case in the United Kingdom, where the principal corruption rationale is the more instrumental corruption of government, where rewards are made for payments received. Yet if that is the reason for disclosure, it is not clear why we require disclosure from political parties which have no chance of ever forming the

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<sup>35</sup> See also Kurer, note 32 above.

<sup>36</sup> Committee on Standards in Public Life, note 25 above, para 6.7.

<sup>37</sup> *ibid.*

government, or indeed of ever having a candidate elected to public office. In these cases it is difficult to see what the corruption argument is, unless it is an argument based on corruption of party. But this would be a very weak form of corruption in the case of parties with no hope of election (and where the party may simply be the *alter ego* of an obsessive individual). Indeed in these cases there is a strong claim that disclosure conflicts with other objectives of a regulatory strategy, particularly the right to privacy.<sup>38</sup> If there is no serious corruption rationale associated with donations to political parties which have no chance of forming government, the only public interest in requiring disclosure is that electors are entitled to know who is backing the parties who are fielding candidates in the contest.

Further evidence that corruption is thus not the only objective of disclosure is provided in part by the timing at which disclosure is required. Ordinarily in the United Kingdom the legislation requires disclosure of £5,000 donations to take place every three months.<sup>39</sup> There is nothing exceptional about this: timely disclosure would be consistent with an anti-corruption rationale. But disclosure must also take place every week during an election campaign,<sup>40</sup> this being necessary on the ground that the information is urgently needed at an election time. This is because it “may have a bearing on the response of other potential donors and it may impact upon voters’ intentions”.<sup>41</sup> So here we have an explicit acknowledgement that the purpose of disclosure is the arming of electors and others with information that may need to make a decision (for whom to vote and to whom to donate). But although important,

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<sup>38</sup> It may also conflict with the need to ensure that parties are well funded if the only way for a new or special interest party to get off the ground is to rely on the wealth of a rich benefactor. There are a number of parties which in the past (the Referendum Party) and which to this day (the Pro-Life Alliance) are so dependent.

<sup>39</sup> PPERA, s 62.

<sup>40</sup> *ibid*, s 63.

<sup>41</sup> Committee on Standards in Public Life, note 25 above, para 4.58.

this is an inadequately considered rationale, and it is one which is incompletely implemented. Thus, the obligation to disclose donations on a weekly basis during an election campaign applies only to the political parties: there is no corresponding obligation on the candidates, the people against whose name the electors place their crosses. Although there is a duty on the part of candidates to disclose the identity of donors, this applies only in a post election return,<sup>42</sup> by which time it is too late for the elector whose decision would be influenced by the company the candidates keep. It also denies the local press the opportunity to expose donors and to raise questions about their motives.

### **Corruption and the Effectiveness of Disclosure**

Although there is a general unreflecting acceptance of the benefits of disclosure, there is nevertheless cause for some hesitation, for two reasons. In the first place, disclosure on its own cannot be effective to deal with corruption. It is trite to point out that disclosure deals with only one form of corruption – the corruption through parties and candidates; it does not close off other avenues which involve the corruption of officials, or other ways of reaching the political classes. As an anti-corruption device, disclosure of donations to political parties thus has to be part of a general anti-corruption strategy that tackles all the vulnerable points of the political system. Otherwise the problem may simply be displaced. But it is also trite to point out that there may be more effective ways of dealing with the corruption which disclosure is designed to prevent. The root cause of the problem (so far as political party corruption is concerned) is the need that the parties have for money. This suggests that if corruption is the real concern, then the main anti-corruption strategies

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<sup>42</sup> Representation of the People Act 1983, s 81.

should be based on reducing the demand for money and on providing alternative sources of money. The former points to the need for spending limits of the kind which operate in Canada and the United Kingdom to restrict how much parties and candidates may spend on their campaigns. In the United Kingdom this goes so far as to ban the use of paid television and radio advertising. The latter points to the need for some form of State or public assistance, whether in cash (such as annual subventions to the parties by the State) or in kind (such as the provision of free broadcasting time,<sup>43</sup> free mail shots to voters, and the free use of public buildings by candidates at election time).<sup>44</sup> But in order to be effective in reducing the demand for money these strategies must ensure that the parties have enough to meet their needs and that there are no loopholes capable of exploitation by those looking for a competitive advantage.

The other aspect of disclosure that needs rehearsing is that it may be counter-productive. This is because it may expose corruption, in the thicker sense of the term as defined above. In other words it may reveal a heavy dependence of the political parties on large corporate and personal donations, and a deep penetration of the political system by the rich and powerful. Yet the levels of corruption exposed may be deemed acceptable, or less unacceptable than the alternatives, which would involve the funding of the political parties by the State, seen by some as the involuntary conscription of the unwilling taxpayer. Related to this is the danger that if it is effectively complied with and monitored, disclosure may discourage people from making donations in a society suspicious of the links between money and power. In these circumstances the parties are driven into the arms of fewer and fewer large

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<sup>43</sup> On the problems of allocating free time between political parties at an election, see R (BBC) v Pro-Life Alliance [2004] 1 AC 185.

<sup>44</sup> But for a warning of the dangers of over-regulation, see S Issacharoff and P S Karlan, note 29 above.

donors who are prepared to tolerate the adverse publicity and the prurient interest in their affairs. Not only does this dependency reinforce the risk of corrupting tendencies, but it also destroys other goals that disclosure is designed to promote. It could create a disincentive rather than an incentive to donate, thereby undermining the ambition that political parties should be funded by a broad base of electors. In turn that undermines the ambition that political parties should have enough money to fund their campaigns and their other activities, unless other sources of money can be provided. We thus have a curious paradox: a device designed to whet the public appetite for democracy may simply harvest food for further indigestion. It exposes a form of corruption of the political process which is not the target of the legislation, and which the political system is institutionally unable to address.<sup>45</sup>

### **THE PRACTICE OF DISCLOSURE**

As the Political Parties, Elections and Referendums Act (hereafter PPERA) came into force less than a year before the General Election of 2001, the disclosure data it generated told us relatively little about the nature of party funding in that election. The data set was incomplete, and the parties and other participants were still moving up a relatively steep learning curve in their familiarity with the legislation. Since then, a General Election (May 2005) has been concluded, as have Scottish Parliament Elections (May 2003), European Parliament elections (June 2004) and numerous local government elections and referendums. A full electoral cycle has been completed and we are for the first time placed to examine the data yielded by the new disclosure regime. Under the new legal regime, quarterly reports disclosing the

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<sup>45</sup> As we shall see, the institutional limitations may relate to the nature, structure and organization of the political parties themselves, forms which may have emerged in order to enhance popular engagement with and participation in the political process.

income of registered political parties have been published by the Electoral Commission since February 2001. For present purposes, all quarterly reports from that date until 31 March 2005 have been scrutinised, as well as the five pre-election reports dating from 5 April 2001 to 5 May 2005. Cumulatively, the Electoral Commission registers reveal that a total of £148.2 million was donated to all political parties. Of these, the largest single beneficiary was the Labour Party, which received more donations and more money than other parties. The average Labour Party donation appears to be smaller than the average donation to the Conservatives but larger than that to the Liberal Democrats. In the period studied, the Labour Party received 4,438 donations, which totalled £65,980,846.96; the Conservative Party received 2,775 donations, totalling £58,679,862.00; and the 1,580 donations to the Liberal Democrats totalled £13,667,746.84. Thus, the average donation to the Labour Party was £14,867, the Conservatives £21,146, and the Liberal Democrats £8,650.

### **The Labour Party**

It will be no great surprise that the bulk of the Labour Party's income derives from trade union sources. Given the historic link between the two, any other result would be a surprise. True, the Labour Party's dependence on the labor movement has lessened, due in no small part to the concerted attempts of the party to seek funds from private donors, whether individual or institutional. Nonetheless, of the £65,980,846.96 donated to the Labour Party, £42,187,613.60 derived from trade union sources, accounting for 64% of donation income. The bulk of trade union funds were donations by the so-called 'big four' unions, as follows:

<b>Donor</b>	<b>Cash (£)</b>	<b>Non Cash (£)</b>
UNISON (public service union)	7,817,372.17	50,135.00
GMB (general workers' union)	5,791,367.96	133,083.00
TGWU (transport workers' union)	6,052,711.81	9,749.27
AMICUS <sup>46</sup> (manufacturing workers' union)	10,173,969.69	15,676
Total	29,835,421.63	208,643.27
<b>Total 'Big Four' Donations</b>	<b>30,044,064.90</b>	

The total number of donations from each of these unions was 339, 368, 219, and 618 respectively, many of these from union branches to constituency Labour parties, as well as head office affiliation fees and election donations. Other large union donors included the CWU (communication workers) and USDAW (shopworkers). But between them the four large unions accounted for 45% of the Labour Party's donation income.

As noted above, the near total financial reliance of the Labour Party upon the labor movement has long since passed. In large part, this is due to concerted efforts by the Labour Party to woo large personal donations from wealthy individuals.<sup>47</sup> The Labour Party still receives fewer large personal donations than the Conservative

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<sup>46</sup> This includes donations by the two constituent unions (AEEU and MSF) prior to the amalgamation to create AMICUS in 2002.

<sup>47</sup> See [The Guardian](#), 2 December 2004 (G2)

Party, although that gap appears to be shrinking. In the period under review, Labour received eleven donations in excess of £250,000 from five people:

<b>Donor</b>	<b>Date</b>	<b>Donation (£)</b>
Lord Sainsbury	1/13/02	2,000,000
Lord Paul Hamlyn	12/20/02	500,000
Lord Sainsbury	03/1/03	2,500,000
Mr William Haughey	12/5/03	330,000
Lord Paul Hamlyn	12/19/03	500,000
Sir Christopher Ondaatje	12/19/03	1,000,000
Lord Paul Drayson	6/17/04	505,000
Mr William Haughey	11/12/04	330,000
Lord Paul Drayson	12/21/04	500,000
Sir Christopher Ondaatje	12/27/04	500,000
Lord Sainsbury	3/10/05	2,000,000
<b>Total</b>		<b>10,665,000</b>

In addition to the above, another eleven individuals gave fourteen donations between £100,001 and £250,000, as follows:

<b>Donor</b>	<b>Date</b>	<b>Donation</b>
Alan Sugar	6/9/01	200,000
Lakshmi Mittal	6/28/01	125,000
Sir Ronald Cohen	2/14/02	200,000
Bill Kenwright	6/13/02	200,000
Sir Ronald Cohen	2/17/03	250,000
Sir David Garrard	5/23/03	200,000
Sir Ronald Cohen	5/12/04	250,000
Ms. Denise Gleeson	8/23/04	119,967
Sir Sigmund Sternberg	11/5/05	101,384
Mr William Bollinger	1/14/05	250,000
Mr Nigel Doughty	2/10/05	250,000
Mr Derek Tullett	3/16/05	200,000
Mr Jon Aisbitt	4/13/05	250,000
Sir Ronald Cohen	4/26/05	250,000
<b>Total</b>		<b>2,846,351</b>

On the basis of these figures, during the relevant period the Labour Party

relied on only 16 people for almost a quarter of its donation income. If trade union donations are removed from the equation, this select group accounted for more than half of donation income. This, however, is not the end of the story. If we also take into account those donors whose contributions over the period total £100,000 in aggregate, a further twenty-one donors emerge, contributing £3.32m. This category of donations accounts for 5% of donation income and 14% of donation income if trade union income is excluded. The cumulative total for all high value donations (defined as donations above £100,000, or donations from a single source which, over the period, aggregate to over £100,000) is £16.8m. It follows therefore that large private donations account for 25% of Labour donation income, although that figure rises dramatically to 71% of donations if those of trade unions are filtered out. In any event, it is clear that the ability to attract large donations from wealthy individuals is no longer the exclusive preserve of the Conservative Party.

The remaining issue revealed by the Electoral Commission's disclosure reports relates to corporate funding. Here the evidence suggests that claims of Labour dependence on corporate money are greatly exaggerated. It is of course the case that almost all the individual donors listed above made their money in business, but as PPERA makes clear, there is a difference between corporate donations and donations from private individuals, with each operating under a very different regulatory framework.<sup>48</sup> According to the Electoral Commission, the Labour Party has received 405 donations from companies yielding £3,029,804.63, which represents 4.6% of the Labour Party's donation income. In comparison to the scale of donation given by individuals, the average business donation to Labour is a relatively modest £7,481.

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<sup>48</sup> Ghaleigh, *op cit* n.1.

Only one cash donation was over £100,000 and only one in kind (respectively, Sterling Capitol Plc., £160,000 in cash and the Video Meeting Company, £131,930 in kind). Further, all but six cash donations were £25,000 or less – two of which were donations of £30,000 from Manchester Airport which had to be returned for reasons that are obscure. Taking aggregate corporate contributions into account does not significantly alter the picture, adding as it does only KPMG’s seven non cash donations of £225,000 and TBWA’s mixed donations of £727,172. Although sizable, neither alters the fact that corporate money has a decidedly tertiary role in Labour’s income streams. Indeed, in considerable contrast to its position vis-à-vis individual donors, Labour’s reliance on corporate money is slim indeed and, as we shall see, the position relating to the Conservative Party is very different.

### **The Conservative Party**

For obvious reasons, donations to opposition parties are never likely to be as newsworthy as donations to the governing party. Nonetheless, the perception of the Conservatives’ reliance on the largess of a single donor (Lord Ashcroft) and the questions raised about the Conservative-nominated peers in 2004 indicates that the opposition parties are not immune from scrutiny and criticism. (More recently, revelations that as much as half of the Liberal Democrats’ donation income issues from a single individual has proved to be one of the major immediate post-election talking points.<sup>49</sup>) For much of the post-1997 period, there seemed to be a crisis in the opposition parties insofar as it seemed that they had fallen badly behind Labour in their fund raising capacities and, accordingly, in financial security. Labour’s traditional trade union base has weathered well, providing financial security by way

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<sup>49</sup> [The Guardian](#), 27 May 2005.

of a large and reliable income stream. This has remained true despite strategic attempts by the Conservative governments of the 1980s both to undermine the trade union movement generally and to place more discrete obstacles in the way of their donating to political parties.<sup>50</sup> To the extent that such measures sought to undermine the financial link between the Labour Party and trade unions, they have largely failed (although affiliated union membership is in steady, if gradual, decline). The Conservatives' comparable sources of funding was of course corporate and large personal donations. To these must now be added the State.

Between February 2001 and May 2005 the Conservative Party received 2,775 donations, which is significantly fewer than Labour's 4,438, though more than Labour's 1,795 donations if trade union donations are deducted from the total. The first striking feature of Conservative funding is the party's heavy reliance on the State. Of the £58,679,862 in donations reported by the Conservative Party, some £16,739,555.49 were in the form of public funds, such as Short money<sup>51</sup> and Policy Development Grants.<sup>52</sup> Accordingly, the party most strongly opposed to State funding depends on public funds for over a quarter (29%) of its donation income. The other feature of Conservative Party funding is that it is more heavily dependent on large donations than the Labour Party. The average Conservative Party donation is £21,146. In the period under review), the Conservatives received eleven donations in excess of £250,001, as follows:

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<sup>50</sup> Trade Union and Labour Relations (Consolidation) Act 1992 requires that ballots be undertaken every 10 years for the continuance of trade unions' political fund.

<sup>51</sup> Named after Edward Short, the government minister who introduced it, this is money given to opposition parties to assist them in the conduct of their parliamentary duties by way of enhanced research and staffing etc. Introduced in 1975, the quantum of Short money was tripled by the Labour government in 1998.

<sup>52</sup> This scheme, introduced by PPERA, s.12, annually distributes £2m to parties to enable policy development.

<b>Donor</b>	<b>Date</b>	<b>Donation</b>
(£)		
Mr John Wheeler	5/3/01	2,450,000
Sir Paul Getty	6/11/01	5,000,000
Mr John Wheeler	11/27/03	504,000
Mr George Magan	2/24/04	400,000
Mr Maurice Bennett	7/16/04	450,000
Ms. Ruth Beardmore	11/5/04	396,409.55
Mr George Magan	12/23/04	325,417.64
Mr Maurice Bennett	1/4/05	500,000
Mr Joseph C Bamford	1/5/05	1,000,000
Ms. Diana Van Neivelt Price	3/1/05	440,000
Sir Tom Cowie	4/15/05	400,000
<b>Total</b>		<b>11,865,827.19</b>

In terms of very large donations (that is, single donations over £250,000), there is rough parity between the two major parties, both in terms of number of donations (both eleven) and their combined value (an extra £1m for the Conservatives).

The Conservatives also received 13 cash donations of between £100,001 and £250,000 from nine people, as follows:

<b>Donor</b>	<b>Date</b>	<b>Donation (£)</b>
Mr Robert Fleming	5/15/01	206,000
Mr Roderick Fleming	5/15/01	200,000
Mr Leonard Steinberg	1/3/02	110,000
Sir Stanley Kalms	3/4/02	120,500
Sir Stanley Kalms	6/24/02	160,000
Dr Hans Rausing	7/1/04	198,000
Mr John Wheeler	7/2/04	236,000.90
Mr Robert Edmiston	9/10/04	250,000
Mr Frederick Catlin	10/22/04	150,000
Mr John Wheeler	12/22/04	200,000

Dr Hans Rausing	2/21/05	145,000
Mr John Wheeler	3/10/05	190,000
Mr Michael E Slade	3/23/05	102,000
<b>Total</b>		<b>2,267,500.90</b>

There were also two donations in kind (travel) by Corin Graeff (£128,353) and Edward Haughey (£119,816) accounting for another £248,169. Total donations from these ten people thus amounted to £2,515,670.78. Overall, the total sum that the Conservatives received in high value donations was thus £14,381,497.97, deriving from just ten people and representing 35% of all donations from private sources. This compares with a figure of 25% for Labour. As with Labour however, attention must be paid to donations amounting to £100,000 plus, in aggregate. An additional £3.87m was raised from the aggregate donations of 31 donors, raising the Conservatives' reliance on large donations to 43% of donation income from private sources.

Apart from the heavy reliance of the Conservative Party on the State and the heavy dependence on large personal donations, the Conservative Party also receives more donations from companies than does the Labour Party, and these donations are of a significantly higher average value (£14,642) than the comparable donations to Labour (£7,481). 823 corporate donations yielded £12,050,562.21. Of these donations, five were over £250,000:

<b>Donor</b>	<b>Date</b>	<b>Donation (£)</b>
Norbrook Laboratories	4/2/01	1,000,000
IIR Ltd	3/26/02	520,000
IIR Ltd	12/31/04	267,500
Intercapital Private Group Ltd	1/14/05	350,000

IIR Ltd

3/30/05

303,720.89

**Total**

**2,441,220.89**

In addition to the foregoing, another 12 company donations of between £100,001 and £250,000 were made to the Conservative Party, the combined value of which was £1,868,615.85. More significant is the category of large, aggregated, donations. In the period under review, 21 companies each gave a number of donations which flew below the £100,000 radar, but when aggregated were above it. In total, donations of this sort amounted to £3.73m. Twenty three corporations thus accounted for 67% (£8,044,000) of the total amount of company donations received by the Conservative party, and company donations in total accounted for 29% of all their private donations. Significant (in excess of £100,000) company donations thus account for £4,309,836.74, and the Conservatives rely on companies for approximately 10% of their private donations (£41,940,306.51). Additional significant donations were received from unincorporated associations such as the Carlton Club Political Committee, the Scottish Business Group Focus on Scotland and the Midlands Industrial Council which collectively donated in excess of £1.16m.<sup>53</sup>

The activities of Bearwood Corporate Services are particularly noteworthy. In the first quarter of 2005 – a period in which it was an open secret that a General Election would be held on May 5 – Bearwood donated £284,279.50 in 35 separate cash donations to 33 local Conservative constituency parties, all of which were widely

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<sup>53</sup> If company and personal donations are combined, we find that the Conservatives relied on 43 such donations in excess of £100,000 to provide £26.3 million of their donations from private sources, representing 63% of their total private donation income. Without public funding and donations in excess of £100,000, the Conservatives would have been required to finance their operations (including a General Election and a European election) since 2001 with donations of less than £16 million.

perceived as marginal seats. In total, the company donated £574,679.49. This suggests a new strategy on the part of donors, which is to direct money to candidates rather than only to the party centrally. It also reveals a problem with the disclosure rules, for these donors of significant aggregate sums may not always be easily identifiable, with the name of the donor concealing as much as it reveals, even though the practice is perfectly lawful and even though there is no intention to be anything other than fully transparent. Thus, although not apparent from the record, Bearwood Corporate Services is reported in the press to be a mergers and acquisitions company closely linked to Lord Ashcroft, the former Conservative Treasurer, a matter which is considered by some to be relevant information. In the absence of media reports, this connection would remain obscure.<sup>54</sup> (Lord Ashcroft had previously made substantial donations to the Conservative Party, and has continued to do so.) Also notable is the conduct of the Midlands Industrial Council, an unincorporated association of ‘Tory businessmen’ which provided 26 donations amounting to £590,602.37, of which £349,000 was donated to Conservative Central Office [DAN - it is customary to refer to Conservative Central Office not the Conservative Central Office] and the balance to local parties. A further £55,000 was donated during the election reporting period.

### **The Liberal Democratic Party**

The Liberal Democrats received 1580 donations in the period under review, raising £13,667,746.84. Of these donations, slightly more than one quarter (£3,847,546.70) took the form of donations from public funds. Up until the start of 2005, the Liberal Democrats had a greater degree of reliance on public funds – some

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<sup>54</sup> [The Guardian](#), 24 May 2005.

38%. As we shall see, a series of large donations from a single source radically altered their income profile prior to the General Election of 2005. A total of £9,130,199.39 was provided by 1,291 cash donations, with another 190 donations in kind providing £549,026.95. The average cash donation to the Liberal Democrats was £7,072. Again, at the start of 2005, that figure would have been a relatively modest £4,303. The party received only two private cash donations in excess of £50,000, of which one was a bequest.

<b>Donor</b>	<b>Date</b>	<b>Donation (£)</b>
Mr A H Wilkinson	8/24/04	100,000
Mr S Forecast (bequest)	2/19/04	175,251.26
<b>Total</b>		<b>275,251.26</b>

Donations which in aggregate totalled over £50,000 were also significant to the Liberal Democrats, as follows:

<b>Donor</b>	<b>Aggregate Donation (£)</b>
Mrs L Featherstone	57,744.23 (30 donations (13 non cash))
Lord Jacobs	183,928 (13 donations (1 during election))
Mr D Jukes	50,000 (1 donation, 1 bequest)
Mrs M B Kulvietis	50,000 (4 donations)

Enid Lakeman	73,000 (2 donations, 1 bequest)
Mr B Roper	67,188 (6 donations (1 of £50,000))
Mrs M Roper	54,000 (2 donations (1 of £50,000))
Evelyn Strasburger	50,000 (1 donation)
Paul Strasburger	50,000 (1 donation)
Mrs I Sutton	69,213.90 (1 donation, 1 bequest)
Mr A Wilkinson	42,000 (5 donations)
Mr P Yeldon	94,669.60 (9 donations (1 of £40,000))
<b>Total</b>	<b>783,999.50</b>

The Liberal Democrats also received three donations from the trade union UNISON totalling £93,441.41 and further aggregate donations of over £50,000 from the Liberal Democrat Balls 2001, 2002, 2004 totalling £146,712.15 (5 donations).

It is in terms of corporate donations that the Liberal Democrats' disclosure record is remarkable, totalling £5,403,041.16, the overwhelming majority of which derived from a single source in the three months prior to the General Election of 2005. Donations between £100,001 and £250,000 are as follows:

<b>Donor</b>	<b>Date</b>	<b>Donation (£)</b>
Alpha Healthcare Limited	5/3/05	100,000
5 <sup>th</sup> Avenue Partners Ltd	2/10/05	100,000
Joseph Rowntree Reform Trust	6/30/01	207,300
	11/14/02	125,000
	1/6/03	125,000
	4/2/03	125,000

	7/3/03	125,000
	10/11/03	125,000
	1/5/04	125,000
	4/2/04	125,000
	7/2/04	125,000
	10/8/04	250,000
	1/5/05	250,000
5 <sup>th</sup> Avenue Partners Ltd	2/25/05	151,000
<b>Total</b>		<b>2,058,300</b>

A further three company donations were made in excess of £250,000:

Carrousel Capital Ltd	3/21/05	275,000
5 <sup>th</sup> Avenue Partners Ltd	3/22/05	1,536,064.80
5 <sup>th</sup> Avenue Partners Ltd	3/30/05	632,000
<b>Total</b>		<b>2,443,064.80</b>

Finally, donations which in aggregate amounted to £50,000+ were as follows:

<b>Donor</b>	<b>Aggregate Donation (£)</b>
Alpha Healthcare Ltd	10,000 (1 donation)
Carrousel Capital Ltd	15,000 (1 donation)
Hereford Liberal Club Ltd	61,755.50 (22 donations, incl 12 non cash)
Joseph Rowntree Reform Trust	8,561.80 (6 donations)
KPMG	163,068 (5 non cash donations)
<b>Total</b>	<b>258,385.30</b>

**Overall total****4,759,732.10**

These twenty donations account for 88% of all company donations and 34% of total donation income. They account for almost half of donation income from private sources (48%).

Almost half of the value of company donations came from a single source – 5<sup>th</sup> Avenue Partners Ltd (£2,419,064.80). Indeed three donors are responsible for 80% of all company donations (£4,299,926.60) to the Liberal Democrats. It is to be noted, however that although it uses a corporate form, the Joseph Rowntree Reform Trust is not an commercial organisation but rather a private trust founded on a confectionary fortune and dedicated to funding social policy research. When these donations are considered in light of total donations to the Liberal Democrats, the three companies account for more than 30% of all donation income and 44% of all donation income from private sources. 5<sup>th</sup> Avenue Partners Ltd alone accounts for 18% of total donation income and 25% of donation income from private sources. 5<sup>th</sup> Avenue Partners gave £2.4m in the first quarter of 2005 out of £4,164,970 given in total in the first quarter to the party. The company itself was only incorporated on 15 March 2004 and was bought from its previous owners on 11 August 2004, six months before the first donation. There are no available accounts presently at Companies House and the Director, Michael Brown, is resident overseas. Although this was a highly controversial and embarrassing donation for the Party, it nevertheless helped the Liberal Democrats close the funding gap with the other two parties. The Liberal Democrats raised £4,164,970.51 from 193 donations in the first quarter of 2005 in the run up to the General Election compared to just £181,751.83 from 42 donations in the

same period before the 2001 General Election. This compares with £8m for the Conservatives (£8,050,707.12 from 401 donations) and £9.1m for Labour (9,144,704 from 494 donations).

## **POLITICS, PURPOSE AND PRACTICE:**

### **ANALYSIS AND ASSESSMENT**

What do these data tell us about the impact of the disclosure regime? The first and most obvious point is that they reveal that the legislation has not been effective in eliminating extremely large donations from the political process. Private donations of more than £250,000 account for about a sixth of Labour Party donation income and more than a quarter of Conservative Party donation income (if State subsidies are excluded). Indeed it is possible that the legislation has made the parties even more dependent on a smaller number of large donors. In the case of the Labour Party, about £11 million (a sixth of its donation income) has been provided by just 5 individuals. The second and equally obvious point is that although the Conservatives are heavily dependent on corporations, corporate giving is nevertheless quite limited, and is now considerably less than trade union contributions to the Labour Party. It is tempting to speculate that the relative absence of corporate donations is due to the requirement introduced in 2000 that companies donate only with the approval of their shareholders. But although these requirements may initially have had a chilling effect, it appears to be the case that company political donations had already declined steeply as companies had largely fallen out with the Conservative Party. With the abandonment by Labour of a socialist program, there was less cause for companies to make significant donations to the Conservative Party, and there was a growing

concern on the part of some businesses that the issue of political donations was a controversial one they had best avoid.<sup>55</sup>

Yet there is no sense of urgency about these trends in Britain and no sense that there is a continuing problem. It appears to be enough that the donations are in the public domain, available for comment and investigation. In this sense the statutory disclosure rules may simultaneously expose and legitimize very large donations and serve to increase our tolerance threshold about the acceptability of private money in public affairs. It remains the case nevertheless that large donors have opportunities that are not available to less well-heeled or politically disinclined individuals, and that these opportunities arise only by virtue of their donations or prospective donations. The Labour Party's fund-raiser has acknowledged publicly that he introduces prospective donors to the Prime Minister (in the latter's capacity as party leader),<sup>56</sup> and it is known that those who buy tickets for gala dinners can normally expect to be graced by the presence of senior politicians at their table. Other parties quite openly sell access to senior politicians, with the level of access determined by the amount of the donation. In 2001 the Conservative party wrote to selected electors shortly before the general election soliciting donations and inviting them to join one of a number of "clubs." For a donation of £10,000 it would be possible to join the Renaissance Forum, "the most prestigious of our donor clubs." This would enable the donor to "meet face to face, prominent decision makers, opinion formers, leading members of

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<sup>55</sup> See for example, The Independent, 20 May 2002 (business calls for State funding)

<sup>56</sup> The Guardian, 2 December 2004 (G2)

the Conservative front-bench and senior Party officials at small and exclusive dinners,” including an event at which the Party leader would be guest of honor.<sup>57</sup>

If the disclosure regime reminds us that the integrity of the political process is challenged by large donations to political parties, does it also serve to promote the objectives of its authors, namely the elimination of corruption (in the sense of improper influence) by the risk of exposure? The question is complicated by a tension among the statutory objectives. The tension lies in the difficulty of controlling improper influence by donations which may give rise to an appearance or a danger of corruption, yet which are accepted as legitimate.<sup>58</sup> It is perhaps unsurprising that this tangling of wires should lead to allegations that donors have been able to secure benefits for their donations. These include both commercial benefits and personal honors. Yet it is impossible to prove cause and effect – that a donor received a benefit or an honor because of his or her donation. Thus although there have been three particularly controversial donations, it has been asserted robustly that the decisions in which those donors were interested were made in accordance with pre-determined procedures. In at least one of these cases an investigation by an independent and respected source was unable to establish any impropriety; indeed, quite the opposite.<sup>59</sup>

Although there was thus no direct evidence of corruption, these controversies nevertheless rocked the government in the way that the Ecclestone case had done

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<sup>57</sup> Recent Renaissance Club events were said to include a dinner with Lady Thatcher, a dinner with the US Ambassador, and a dinner with Michael Ancram QC MP. Donors to the Front Bench Club had to make do with talks by Archie Norman MP, Francis Maude MP, and Michael Portillo MP.

<sup>58</sup> A good parallel here is the rule against bias in administrative law: it is not enough that justice is done; it must also be seen to be done. See H W R Wade and C F Forsyth, *Administrative Law* (9<sup>th</sup> ed, OUP, 2004), ch 13

<sup>59</sup> Comptroller and Auditor General, *Procurement of Vaccines by the Department of Health*, note 27 above

before. They led the Labour Party to introduce new funding rules for the vetting of donations. *A Statement for Donors* was adopted in 2002 requiring donors to the Labour Party to declare that they provide support because they are broadly committed to the aims and values of the Labour Party and that they provide this support “without seeking personal or commercial advancement or advantage for themselves or others.” The Statement also makes clear that “by supporting the Labour Party with donations, it is understood that this should not of itself disadvantage anyone, whether personally or in terms of business activities.” In addition to this new Statement, another important initiative is the setting up of a new fund-raising committee to “have oversight in the area of major donors.” This has been referred to in the press as an ethics committee, and is expressly stated by Labour to be designed to build on the legislation. But the problem with this is that the *Statement of Donors* does not otherwise include any ethical principles to regulate who is or is not an appropriate source of money. The other problem is that the oversight committee includes the party’s fund-raiser, the person whose work presumably it is the responsibility of the Committee to oversee.<sup>60</sup>

It is difficult to see how the contradiction at the heart of the British system can be satisfactorily accommodated: how simultaneously to tolerate (indeed welcome) large donations yet to eliminate any suspicion that these donations undermine the integrity of the political classes or the political system itself. Or - in other words - how simultaneously to condemn corruption of personnel and institutions, while tolerating corruption of process. But it is not only at the level of principle that mixed messages

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<sup>60</sup> For a fuller account, see K D Ewing, ‘The Disclosure of Political Donations in Britain’, in K D Ewing and S Issacaharoff, *Party Funding and Campaign Finance in Comparative Perspective*, note 1 above, ch 4. For an account of the Committee in operation, see *The Sunday Times*, 19 March 2006.

are conveyed by the legislation. Similar confusion exists in its practical implementation. Thus while the Labour Party has adopted a new *Statement for Donors*, the government has abolished the Political Honours Scrutiny Committee.<sup>61</sup> This is a Committee which had previously vetted nominations for personal honors to ensure that decisions were not proposed as a reward for political donations.<sup>62</sup> There is no suggestion that the government abolished the Committee because it was ineffective – attention has been drawn to an alleged coincidence that all million pound donors to Labour since 1997 have been ennobled or knighted if they had not been already at the time the donation was made.<sup>63</sup> If the contradiction cannot be accommodated, the only way by which it could be resolved would be by addressing the challenge to the integrity of British political life which is associated with large personal donations of up to £5 million. This points to the need for more sophisticated political integrity strategies which focus on the legitimacy of large personal donations, alternative sources of funding, and the spending options available to the parties. This would suggest a greater role for State funding to relieve the parties of the pressure to chase after large donors as well as a further reduction in permissible spending.

## CONCLUSION

This article has been concerned with the rationale for disclosure and the operation of the disclosure regime in Britain between 2001 and 2005. Since then, a fresh scandal has erupted, it having transpired that the two main parties solicited loans

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<sup>61</sup> The Sunday Times, 12 June 2005; The Guardian 13 June 2005.

<sup>62</sup> For an account of the Committee's work, see Committee on Standards in Public Life, note 10 above, ch 14.

<sup>63</sup> The Sunday Times, 15 January 2006.

of up to £35 million to contest the general election in 2005.<sup>64</sup> Commercial loans were not subject to the transparency requirements of the Political Parties, Elections and Referendums Act 2000: there was no obligation to disclose them, no matter the amount.<sup>65</sup> Some of the loans made in 2005 were made by people who were subsequently nominated by the Prime Minister for a seat in the House of Lords, but in several cases the nominations were blocked by the House of Lords Appointments Commission. This gave rise to serious allegations of loans for honors, fuelling concern that donors (and now lenders) to political parties enjoyed disproportionate chances of elevation to the red benches of the House of Lords. It was already the case that many million pound donors to Labour since 2001 coincidentally have been given a political honor of some kind (peerage or knighthood).<sup>66</sup> In the wake of this scandal, a serious police investigation is being conducted which has so far seen the arrest and subsequent release of the Prime Minister's senior fund raiser, who has vigorously asserted his innocence of any wrongdoing.<sup>67</sup> The arrest related to the PPERA and legislation (the Honours (Prevention of Abuses) Act 1925) designed to stop the trade in political honors. The government has also moved with alacrity to introduce legislation which requires loans to be disclosed in the same way as donations.<sup>68</sup>

The other main consequence of the most recent funding scandal has been the announcement of another round of funding reform.<sup>69</sup> The lesson from the regime

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<sup>64</sup> See The Sunday Times, 12, 19 March 2006. The need to repay these loans has weighed heavily on both main parties, who have had to seek large overdraft facilities – see The Financial Times, 19 July 2006

<sup>65</sup> Where a loan was given at less than the market value, the amount of the donation is the difference between the commercial rate on the one hand and the rate paid by the party on the other: PPERA, s 53(4)

<sup>66</sup> The Sunday Times, 19 March 2006

<sup>67</sup> The Guardian, 13 July 2006

<sup>68</sup> Electoral Administration Act 2006

<sup>69</sup> See [www.partyfundingreview.gov.uk](http://www.partyfundingreview.gov.uk)

introduced in 2000 is that corruption of institutions and personnel to which the disclosure laws were addressed will not succeed while corruption of process is tolerated in the form of large donations. But herein lies another problem. Any initiative to cap donations by statute would founder on the quirks of British party structure. The Labour Party is an organization of individual members and affiliated trade unions (which are members of the Party in their organizational capacity, admitted and expelled as such). It would be impossible to cap donations – if a donation were to include a trade union affiliation fee as is currently the case for disclosure purposes - without undermining the freedom of political parties to determine their own internal structures.<sup>70</sup> In any event, it is worth recalling that trade unions represent huge numbers of individuals, and that in order to contribute to political parties, trade unions are required by legislation to ballot their members for authority to establish political funds. These funds must be financed by a separate political levy of the members, any of whom may ‘opt out’ of the obligation to contribute. If our concern then is with the democratic credentials of the process, trade union donations under the present scheme are not a problem, being nothing more than the aggregations of very small donations from a very large number of individuals. Indeed, as a mechanism of promoting participatory democracy, the role of trade unions in the party funding process is as beneficial as it is venerable. The overriding need of the parties may well be to reduce their dependence on large donations, and this may well point to a greater role for the State in underwriting some of the costs incurred by political parties. But there is an even greater need to reduce the demand

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<sup>70</sup> For a full examination of this issue, see K D Ewing, Trade Unions, the Labour Party and Political Funding (Catalyst, 2002), and K Ewing, The Funding of Political Parties – The Trade Union Case for Reform (TULO, 2006).

for money by reducing the capacity to spend it, a need in other words for tighter spending limits.

